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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,313

05/16/2007

James W. Cree

TRED54 (345 US)

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EXAMINER

VONCH, JEFFREY A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/05/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,313	Applicant(s) CREE ET AL.	
	Examiner Jeff A. Vonch	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7,10-14,16,18,27,28 and 41-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,7,10-14,16,18,27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 41-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on February 3rd, 2010 has been entered.

New Rejections

2. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.**

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41-43 & 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curro et al. (WO 2000/37249) (hereinafter "Curro"), as evidenced by Benson et al. (U.S. Patent No. 5,628,097) (hereinafter "Bensen") and Ahr et al. (U.S. Patent No. 4,463,045) (hereinafter "Ahr"), in view of Dobrin et al (U.S. Patent No. 6,383,431 B1) (hereinafter "Dobrin").

5. Regarding claim 41, Curro teaches a bonded (page 6, paragraph 4) carded (page 6, paragraph 2), extensible (page 5, paragraph 5) fibrous nonwoven web/elastic film laminate with

Art Unit: 1794

a surface energy gradient with the surface energy lower on the first material (fibrous nonwoven) and higher on the second material (thermoplastic film) where the apertured nonwoven is bonded to an apertured film (abstract) (page 3, Summary of the Invention). The apertures in the nonwoven layer expose the apertured film (pg. 13, paragraph 4). Curro does not expressly teach activation stretching but incorporates Benson by reference (which discloses a preferred means of aperturing) (page 6, fourth paragraph, and page 7, paragraph 2). Benson describes creating apertures (access areas) through activation stretching (col. 2, lines 50-59). However, Curro does not teach activation stretching the unified structure.

6. Dobrin teaches a composite nonwoven fabric vacuum laminated (col. 22, lines 7-10) to an apertured elastic layer (col. 20, lines 20-37) that is stretched after lamination (col. 22, lines 11-25). It would have been obvious to one of ordinary skill in the art at the time of invention to activation stretch the unified composite of Curro to form localized disturbances. One of ordinary skill in the art would have been motivated to further reduce the basis weight and cost (Dobrin, col. 22, lines 16-18).

7. Regarding claim 42, Curro does not expressly teach vacuum aperturing but incorporates Ahr by reference (which discloses a preferred means of aperturing) (pg. 12, paragraph 2). Ahr teaches forming a three dimensional apertured film using a vacuum (col. 16, lines 6-32).

8. Regarding claim 43, Curro does not teach vacuum lamination of the unified composite. Dobrin teaches vacuum lamination of an apertured film to a nonwoven (col. 21, lines 21-29) is well-known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use a known commercially available material as suggested by Dobrin.

Art Unit: 1794

One of ordinary skill in the art would have been motivated by the expectation of successfully practicing the invention of bonding a nonwoven layer to an elastic film.

9. Regarding claims 45-47, Curro teaches the composite is used as a topsheet in an absorbent article that can be an incontinent device or catamenial product (page 16, paragraphs 1-2).

10. Claims 41-43 & 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutson et al. (U.S. Pub. No. 2003/0105446) in view of Curro et al. (WO 2000/37249) (hereinafter "Curro").

11. Regarding claim 41, Hutson teaches an elastic material composite (abstract) for an absorbing and containing body exudates in an absorbent article [0038] comprising an apertured elastic film [0052] laminated to a first non-elastic material (a bonded [0026] carded nonwoven fibrous web [0050] formed from the same extensible materials as Applicant [0051]) ([0052] & Fig. 1A) that is then activation stretched to break (create access areas) in the non-elastic layer ([0057] & Fig. 1B). Hutson does not teach any surface energy of any layers and no surface energy gradient within the composite.

12. Curro teaches a fibrous nonwoven web/elastic film laminate with a surface energy gradient with the surface energy lower on the first material (fibrous nonwoven) and higher on the second material (thermoplastic film) where the apertured nonwoven is bonded to an apertured film (abstract) (page 3, Summary of the Invention). The apertures in the nonwoven layer expose the apertured film (pg. 13, paragraph 4). It would have been obvious to one of ordinary skill in the art at the time of invention to form the surface energy gradient with the respective layers of

Art Unit: 1794

Curro on the structurally equivalent design of Hutson. One of ordinary skill in the art would have been motivated to form a surface energy gradient to increase fluid (body exudates) acquisition with less rewet in an absorbent article (Curro, pages 18-19).

13. Regarding claim 41, Hutson teaches the apertured film is vacuum formed [0052].

14. Regarding claim 42, Hutson teaches the composite is vacuum formed and laminated [0038 & 0063].

15. Regarding claims 46-46, Hutson teaches an absorbent article that is an incontinence product [0063].

16. Regarding claim 47, Hutson teaches the composite can be used as a topsheet [0063].

Response to Arguments

17. Applicant's arguments have been fully considered and are persuasive. However, upon further consideration, a new ground(s) of rejection was made.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff A. Vonch whose telephone number is (571) 270-1134. The examiner can normally be reached on Monday to Thursday 8:30-6:00 EST.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/J. A. V./
Jeff A. Vonch
Patent Examiner, Art Unit 1794
February 17th, 2010